

The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MATHHEW ACKLEY and JOSEPH APARO

Appeal 2007-2085
Application 09/441,388
Technology Center 2100

Decided: September 21, 2007

Before MAHSHID D. SAADAT, JAY P. LUCAS, and
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 27-29, 31-35, 38-40, 42-46. Claims 1-26, 30, 36, 37, 41, 47, and 48 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

Appellants' invention generally relates to a computer-based method and a system for enabling sales transactions between third parties through a

communications network, such as Internet auction and classified systems (Specification 1). An understanding of the invention can be derived from a reading of exemplary independent claim 27, which is reproduced as follows:

27. A sales system for coupling to a communications network, comprising:

a first sales interface at a first network address, the first sales interface including a first set of user interface elements;

a second sales interface at a second network address, the second sales interface including a second set of user interface elements; and

a sales server at a third network address that operates the first and second sales interfaces while providing an impression that they are being operated by different entities, wherein the sales server includes a customization interface responsive to user input to define the first and second sets of user interface elements, wherein the sales server is operative to create the impression that the sales interfaces are being operated by different domains by operating with the address of the first sales interface mapped to a first domain and the address of the second sales interface mapped to a second domain different from the first domain, and wherein the first sales interface includes links to a first set of pages not operated by the sales server but being mapped to the first domain, and wherein the second sales interface includes links to a second set of pages not operated by the sales server but being mapped to the second domain.

The Examiner relies on the following prior art references:

Carlin US 6,119,152 Sep. 12, 2000

Mockapetris, "Domain Names – Concepts and Facilities" (hereinafter RFC 1034), Network Working Group, At <http://rfc.sunsite.dk/rfc/rfc1034.html>, Nov. 1987, pp. 1-55.

The rejection of the claims as presented by the Examiner is as follows:

Claims 27-29, 31-35, 38-40, 42-46 stand rejected under 35 U.S.C.

§ 103(a) as being unpatentable over Carlin and RFC 1034.

Rather than reiterate the opposing arguments, we make reference to the Brief and the Answer for the respective positions of Appellants and the Examiner. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered (37 C.F.R. § 41.37(c)(1)(vii)).

We affirm.

ISSUE

To show that the Examiner erred in rejecting the claims under 35 U.S.C. § 103(a), Appellants' arguments focus on the claimed limitations related to the first and second sales interface and the server, each at a different network address and their absence in Carlin (Br. 10). Appellants argue that Carlin's description of the host fails to indicate that the claimed function of operating the first and second interfaces is performed by host 12 (Br. 10-11). Therefore, the issue specifically is whether the prior art teachings disclose or suggest the claimed subject matter including "a sales server at a third network address that operates the first and second sales interfaces."

FINDINGS OF FACT

The following findings of fact (FF) are relevant to the issue involved in the appeal and are believed to be supported by a preponderance of the evidence.

1. Carlin relates to an on-line communications service which allows a plurality of service providers to provide services to respective groups of subscribers, with the on-line service from each provider being independent of the on-line service from other providers (Abstract).

2. Carlin discloses known ways of using on-line services by establishing a communications link by the subscriber to the provider of the on-line service over a communication line, such as TCP/IP networks (col. 1, ll. 18-27).

3. The range of features disclosed by Carlin to be provided by existing on-line services is diverse and may include on-line shopping (col. 1, ll. 28-32).

4. Carlin specifically discloses that a multi-provider on-line system may be uniquely configured by a plurality of service providers, such that each service provider can offer its own subset of features to its subscribers and customize the appearance of the user interface. Each subscriber is associated with a service provider, typically through a subscriber ID. When a subscriber logs on to the on-line system, he or she may access the subset of features determined by the service provider (col. 2, ll. 11-20).

5. The on-line services provided by each service provider are unique to that provider and may not be accessed by the subscribers of other

service providers. Thus, each provider can generate an on-line service which appears to the subscriber to be an independent on-line service (col. 2, ll. 21-32; col. 4, ll. 41-51; col. 5, ll. 13-15).

6. The host described by Carlin may be a network of mini- or micro-computers which are networked together, a larger computer, such as a mainframe computer, or a plurality of mid-size or mainframe computers, may be used (col. 5, ll. 43-50).

7. Terminals 14 and 16 connected as the subscribers or service providers can comprise, for example, personal computers or other processing systems, such as interactive television devices or any other device capable of connecting to a central processing system over a communications line (col. 5, ll. 50-55).

8. With respect to RFC 1034, Appellants neither dispute its teachings related to domain names and identifying sub-domains within a domain, as relied on by the Examiner, nor challenge its combinability with Carlin (Br. 10-12).

PRINCIPLES OF LAW

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. *In re Young*, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). Moreover, in evaluating such references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. *In re Preda*, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968). Thus, what is required in

the analysis is “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness” and not “precise teachings directed to the specific subject matter of the challenged claim” when inferences and creative steps that a person of ordinary skill in the art would employ are taken into consideration. *See KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385, 1396 (2007); *In re Kahn*, 441 F.3d 977, 987-88, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

ANALYSIS

Based on our findings related to the teachings of Carlin, we disagree with Appellants that service providers 16 in communication with host 12 depicted in Figure 1 are different from the claimed first and second sales terminals operated by a sales server. Each service provider is a sales interface (FF 3) which, based on the fact that it communicates on TCP/IP networks (FF 2) and as argued by the Examiner (Answer 8), has its corresponding network address. In other words, a corresponding network address must exist for each terminal so that the communications intended for the terminal may be routed to the corresponding terminals (FF 4 & 5).

We also disagree with Appellants that the functions performed by host 12 of Carlin are not distributable over a network of computers (Br. 11). The function of host 12 is described in Carlin as providing the on-line services offered by the service providers to the subscribers (FF 5-7). In that regard, Carlin provides for a host that may itself be a computer or a network of computers (FF 6). In fact, host 12 manages or operates the unique on-line services available on each service provider (FF 4) while giving the

impression that the service providers are being operated by different domains (FF 5). Therefore, the Examiner has properly combined Carlin and RFC 1034 based on what they teach and suggest to one of ordinary skill in the art.

CONCLUSION

In view of the analysis above, we find that the Examiner's rationale and reasoning presented in support of the rejection are convincing of the obviousness of claim 27. We also note that Appellants have not presented any substantive arguments directed separately to the patentability of independent claims 35, 38, and 46 as well as dependent claims 28, 29, 31-34, 39, 40, and 42-45. In the absence of a separate argument with respect to the dependent claims, those claims stand or fall with the representative independent claim. *See In re Young*, 927 F.2d at 590, 18 USPQ2d at 1091 (Fed. Cir. 1991). *See also* 37 C.F.R. § 41.37(c)(1)(vii)(2004). Therefore, we will sustain the Examiner's 35 U.S.C. § 103 rejection of these claims as being unpatentable over Carlin in view of RFC 1034.

DECISION

The decision of the Examiner rejecting claims 27-29, 31-35, 38-40, 42-46 under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

Appeal 2007-2085
Application 09/441,388

AFFIRMED

eld

SCHWEGMAN, LUNDBERG & WOESSNER/EBAY
P.O. BOX 2938
MINNEAPOLIS MN 55402